

REMARKS

The Office Action mailed December 23, 2008 has been received and reviewed. Each of claims 1-48 stands rejected. Claims 1-6, 10-13, 15, 17, 20, 23-28, 30, 33-35, 37, 40, 42, and 43-48 have been amended herein. Care has been exercised to introduce no new subject matter. Reconsideration of the above-identified application in view of the above amendments and the following remarks is respectfully requested.

Rejections based on 35 U.S.C. § 101

Claims 1 to 34

Claims 1-34 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Claims 2-14 depend from independent claim 1. Claim 16 depends from independent claim 15. Claims 18-22 depend from independent claim 17. Claims 24-34 depend from independent claim 23. As more fully described below, it is respectfully submitted that claims 1, 15, 17, and 23, as currently amended, are directed to statutory subject matter.

The United States Supreme Court has recognized that the expansive language of 35 U.S.C. § 101 includes as statutory subject matter “anything under the sun that is made by man.” *Diamond v. Chakrabarty*, 447 U.S. 303, 308-09 (1980). The USPTO has adopted the Supreme Court’s interpretation and has stated that, in practice, the complete definition of the scope of 35 U.S.C. § 101 “is that any new and useful process, machine, manufacture or composition of matter under the sun that is made by man is the proper subject matter of a patent.” MPEP § 2106(IV)(A). More specifically, the MPEP states that “computer programs are often recited as part of a claim.” MPEP § 2106.01(I). In considering such claims, “USPTO personnel should determine whether the computer program is being claimed as part of an

otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim.” *Id.*; *see also In re Beauregard*, 53 F.3d 1582 (Fed. Cir. 1995). “The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program.” MPEP § 2106.01(I).

Independent claim 1 has been amended to include, *inter alia*, applying one or more factors to patient information, wherein a computing device applies the one or more factors to the patient information to generate an expectation for at least one health maintenance item, automatically determining the expectation has not been satisfied, and displaying a health maintenance schedule associated with the patient. Support for amendments to claim 1 is found, at least, at paragraphs [0036], [0038-0039], [0046], [0048]-[0054], [0057]-[0069], and FIGS. 3-14, of the present application. As such, it is respectfully submitted that amended claim 1 is directed at statutory subject matter. In addition, claim 1 recites that the method is performed “utilizing a computing device.” Thus, the method performed is tied to another statutory class. Each of claims 2-14 are believed to fall within a statutory class based at least upon their dependence from independent claim 1. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejection of claims 1-14.

Amended independent claim 15 includes obtaining, utilizing a computing device, unsatisfied health maintenance item expectations for a person by searching electronic records, wherein the computing device determines possible satisfiers by comparing unsatisfied expectations to information from a database. Additionally, amended claim 15 includes receiving, by the computing device, a request for details associated with at least one of the satisfiers, and displaying the details in a separate screen. Support for amendments to claim 15 is found in the present application, at least, at paragraphs [0036], [0039], [0042]-[0043], [0046],

[0049], [0051]-[0053], [0056]-[0057], [0060]-[0062] and [0066], and FIGS. 2-14, of the present application. As such, it is respectfully submitted that amended claim 15 is directed at statutory subject matter. In addition, claim 15 recites that the method is performed “utilizing a computing device.” Thus, the method performed is tied to another statutory class. Claims 16 is believed to fall within a statutory class based at least upon its dependence from independent claim 15. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejection of claims 15-16.

Independent claim 17 has been amended to include, *inter alia*, obtaining healthcare information for a person by a computing device, wherein the computing device determines the person may have an adverse reaction to a satisfier based on the healthcare information. Additionally, claim 17 includes displaying an input area, receiving a selection of the satisfier, and storing the selection of the satisfier, wherein a health maintenance schedule for the person is updated and displayed. Support for amendments to claim 17 is found, at least, at paragraphs [0044], [0046], [0049]-[0054], [0057] and [0060]-[0062], and FIGS. 4-14, of the present application. As such, it is respectfully submitted that amended claim 17 is directed at statutory subject matter. In addition, claim 17 recites that the method is performed “by a computing device.” Thus, the method performed is tied to another statutory class. Each of claims 18-22 are believed to fall within a statutory class based at least upon their dependence from independent claim 17. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejection of claims 17-22.

Amended independent claim 23 includes a determining module, utilized by a computing device, for automatically determining an expectation has not been satisfied, wherein the computing device determines the expectation has not been satisfied based on information from a database. Additionally, amended claim 23 includes a receiving module for receiving

input indicating the expectation has been satisfied, a displaying module for displaying a schedule for the person, and a displaying module for displaying one or more details of the satisfied expectation. The present application, at, for example, paragraphs [0042]-[0043], [0046], [0049]-[0054], [0060]-[0062] and [0066], and FIGS. 2-14, provides support for the amendments to claim 23. As such, it is respectfully submitted that amended claim 23 is directed at statutory subject matter. In addition, claim 23 recites that the method is performed "utilizing a computing device." Thus, the method performed is tied to another statutory class. Each of claims 24-34 are believed to fall within a statutory class based at least upon their dependence from independent claim 23. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejection of claims 23-34.

Therefore, amended claims 1, 15, 17 and 23 are directed to statutory subject matter. Applicant respectfully requests the withdrawal of the § 101 rejection against independent claims 1, 15, 17 and 23. Claims 2-14, 16, 18-22 and 24-34 depend from the amended independent claims. Therefore, Applicant respectfully requests the withdrawal of the rejection of claims 1-34 under 35 U.S.C. § 101.

Claims 35 to 43, 45 and 47

Claims 35-43, 45 and 47 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter software per se. Claims 36, 38 and 39 depend from independent claim 35. Claims 40-42 depend from independent claim 37. Claims 43, 45 and 47 are independent claims.

Amended independent claim 35 includes a searching module for searching records associated with a person and an obtaining module for obtaining, at a computing device, one or more unsatisfied health maintenance item expectations and possible satisfiers for each of

the unsatisfied expectations. Additionally, amended claim 35 includes a receiving module for receiving input associated a first possible satisfier, a storing module for storing the input, and a displaying module for displaying an updated patient schedule, including the first satisfier and a priority level. Support for amendments to claim 35 is found, at least, at paragraphs [0036], [0038]-[0039], [0042]-[0044], [0049]-[0054], [0057]-[0058], [0060]-[0062] and [0065]-[0069], and FIGS. 3-14, of the present application.

As such, it is respectfully submitted that amended claim 35 is directed at statutory subject matter. In addition, claim 35 recites that steps of the method are performed "at the computing device." Thus, the method performed is tied to another statutory class. Each of claims 36, 38, and 39 are believed to fall within a statutory class based at least upon their dependence from independent claim 35. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejection of claims 35, 36, 38 and 39.

Independent claim 37 has been amended to include, *inter alia*, a determining module for determining an expectation for a health maintenance item for a person utilizing a computing device, automatically determining the expectation has not been satisfied, and determining a recommended satisfier for the unsatisfied expectation. Additionally, amended claim 37 includes a warning module for warning of a possible adverse reaction to the satisfier, a storing module for storing input associated with the satisfier, and a displaying module for displaying an updated patient schedule, wherein the satisfier is selectable to view the input. Support for amendments to claim 37 is found, at least, at paragraphs [0036], [0038]-[0039], [0042]-[0044], [0049]-[0054], [0057]-[0058], [0060]-[0062] and [0065]-[0069], and FIGS. 3-14, of the present application.

As such, it is respectfully submitted that amended claim 37 is directed at statutory subject matter. In addition, claim 37 recites that steps of the method are performed "utilizing a

computing device.” Thus, the method performed is tied to another statutory class. Each of claims 40-42 are believed to fall within a statutory class based at least upon their dependence from independent claim 37. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejection of claims 37 and 40-42.

Amended independent claim 43 includes generating an expectation for a health maintenance item, automatically determining the expectation has not been satisfied, and updating the health maintenance item, utilizing computer processes performed by one or more computing devices. Support for amendments to claim 43 is found, at least, at paragraphs [0036], [0038]-[0039], [0042]-[0044], [0049]-[0054], [0057]-[0058], [0060]-[0062] and [0065]-[0069], and FIGS. 2-14, of the present application. As such, it is respectfully submitted that amended claim 43 is directed at statutory subject matter. In addition, claim 43 recites that steps of the method are performed “on one or more computing devices.” Thus, the method performed is tied to another statutory class. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejection of claim 43.

Amended independent claim 45 includes receiving input associated with a first satisfier and updating, utilizing a computing device, a health schedule for a person based on the input. Support for amendments to claim 45 is found, at least, at paragraphs [0044], [0049]-[0054], [0057], [0058], [0060]-[0062] and [0065]-[0069], and FIGS. 3-14, of the present application. As such, it is respectfully submitted that amended claim 45 is directed at statutory subject matter. In addition, claim 45 recites that steps of the method are performed “utilizing a computing device.” Thus, the method performed is tied to another statutory class. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejection of claim 45.

Independent claim 47 has been amended to include, *inter alia*, receiving input associated with a first satisfier by a computing device, updating the satisfier by the computing

device, and displaying at least some of the input information based on a selection of the satisfier. Support for amendments to claim 47 is found, at least, at paragraphs [0044], [0049]-[0054], [0057], [0058], [0060]-[0062] and [0065]-[0069], and FIGS. 2-14, of the present application. As such, it is respectfully submitted that amended claim 47 is directed at statutory subject matter. In addition, claim 47 recites that steps of the method are performed "by the computing device." Thus, the method performed is tied to another statutory class. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 101 rejection of claim 47.

As such, Applicant respectfully submits amended claims 35, 37, 43, 46 and 47 are directed to statutory subject matter and request the withdrawal of the § 101 rejection against independent claims 35, 37, 43, 45 and 47. Claims 36 and 38-42 depend from the amended independent claims. Therefore, Applicant respectfully requests the withdrawal of the rejection of claims 35-43, 45 and 47 under 35 U.S.C. § 101.

Rejections based on 35 U.S.C. § 112

Claims 17-21 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 18-21 depend from independent claim 17. Applicant respectfully submits claim 17 has been amended to particularly point out the claimed subject matter.

Independent claim 17 has been amended to include, *inter alia*, obtaining healthcare information for a person by a computing device, wherein the computing device determines the person may have an adverse reaction to a satisfier based on the healthcare information, and warning of the possible adverse reaction to the satisfier. Additionally, claim 17

includes displaying an input area, receiving a selection of the satisfier, and updating and displaying a health maintenance schedule.

Claims 43, 45 and 47 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully submits claims 43, 45 and 47 have been amended to particularly point out the claimed subject matter.

Claim 43 has been amended to include, *inter alia*, automatically determining an expectation has not been satisfied, and updating and displaying a health maintenance schedule based on a selection of an input option. Amended claim 45 includes obtaining one or more unsatisfied health maintenance item expectations for a person, obtaining and displaying possible satisfiers for each of the one or more unsatisfied expectations, and updating and displaying a health maintenance schedule. Claim 47 has been amended to include receiving a first satisfier for an expectation for a health maintenance item, obtaining healthcare information for a person, including a second satisfier, and determining the person may have an adverse reaction to the first satisfier. Additionally, amended claim 47 includes warning of the possible adverse reaction to the first satisfier, receiving input information associated with the first satisfier, updating the first satisfier based the input information, displaying the first satisfier, and displaying at least some of the input information based on selection of the first satisfier.

As such, Applicant respectfully submits the amended claims particularly point out and distinctly claim the subject matter which Applicant regards as the invention, and Applicant requests the withdrawal of the § 112 rejection against independent claims 17, 43, 45 and 47. Claims 18-21 depend from amended independent claim 17. Therefore, Applicant respectfully requests the withdrawal of the rejection of claims 17-21, 43, 45 and 47 under 35 U.S.C. § 112.

Rejections based on 35 U.S.C. § 102

Claims 1 to 7, 23 to 34, and 43 in view of the Merkin Reference

Claims 1-7, 23-34, and 43 are rejected under 35 U.S.C. § 102(e) as being anticipated by Merkin et al. (U.S. Patent No. 7,464,041, hereinafter the “Merkin reference”). Claims 2-7 depend from independent claim 1. Claim 24 depends from independent claim 23. Claim 43 is independent. Applicant respectfully submits the Merkin reference does not disclose or anticipate amended independent claims 1, 23 and 43.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP § 2131 (*quoting Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). “The identical invention must be shown in as complete detail as is contained in the ... claim.” MPEP § 2131 (*quoting Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). Applicant respectfully submits the Merkin reference does not disclose amended independent claims 1, 23 and 43.

The Merkin reference is generally directed to “[m]ethods of health care administration.” *See* Merkin reference, Abstract. Merkin states, “[I]n regard to the delivery of such health care, the present invention expressly conditions the administration of the same via two important aspects, the first being directed to health care provided in an office-based setting, and the second being directed to the administration of preventative care and care related to patients afflicted with a chronic condition.” Merkin reference, col. 3, ll. 26-31. Care is determined to be rendered in Merkin, and, “[t]o the extent such care is rendered, the applicable appointments are made and preventative care administered per conventional practices.” Merkin reference, col. 10, ll. 2-5. The Merkin reference is completely silent regarding patients’ medical

records beyond “conventional practices.” *See* Merkin reference, col. 4, ll. 30-47. In Merkin, when a patient refuses service, “it is contemplated that attempts will be made to persuade the patient to have the services rendered by utilizing conventional communications means, whether it be through telephone calls, letters, e-mail or any other type of methodology known in the art.” *See* Merkin reference, col. 11, ll. 28-36.

Claim 1 has been amended to include obtaining patient information and applying one or more factors to the patient information to generate an expectation for at least one health maintenance item. Amended claim 1 includes automatically determining the expectation has not been satisfied, determining and displaying more than one satisfier, and receiving a selection of a satisfier. Additionally, amended claim 1 includes storing a first satisfier, and displaying a health maintenance schedule associated with the patient, including the first satisfier.

The disclosure in the Merkin reference does not mention displaying patient information and more than one satisfier. Merkin is completely silent regarding displays, selecting a satisfier, and/or displaying a health maintenance schedule. In fact, Merkin is specifically limited to “conventional practices” regarding patients’ medical records. *See* Merkin reference, col. 4, ll. 30-47; *see also* Merkin reference, col. 11, ll. 28-36 (“conventional communications means” includes telephone calls and other means known in the art). Therefore, it would not be possible for Merkin to teach or disclose amended claim 1, including determining and displaying more than one satisfier, receiving a selection of a satisfier, and displaying a health maintenance schedule, including the satisfier.

As such, the Merkin reference does not teach or disclose amended claim 1, and Applicant respectfully requests the withdrawal of the § 102(e) rejection against this claim. Dependent claims 2-7 are also allowable, at least for the reasons given above with regard to claim 1. Therefore, Applicant respectfully requests the withdrawal of the rejection of claims 1-7

under 35 U.S.C. § 102(e) as being unpatentable over Merkin et al., U.S. Patent No. 7,464,041, and allowance of claims 1-7.

Amended independent claim 23 includes generating an expectation for a health maintenance item for a person based on medical information associated with the person, automatically determining the expectation has not been satisfied based on information from a database, and displaying the expectation that has not been satisfied. Additionally, claim 23 has been amended to include receiving input indicating the expectation has been satisfied, and displaying a schedule for the person, including the indication the expectation has been satisfied. Amended claim 23 further includes a selecting module for selecting to view one or more details of the satisfied expectation, and displaying the one or more details.

As discussed with respect to claim 1, the Merkin reference is completely silent regarding displaying input options, receiving input indicating an expectation has been satisfied, and viewing a detail of the satisfied expectation. *See* Merkin reference, col. 4, ll. 30-47. In fact, in the Merkin reference, when a patient refuses service, only “conventional communications means, whether it be through telephone calls, letters, e-mail or any other type of methodology known in the art” are contemplated. *See* Merkin reference, col. 11, ll. 28-36. It would not be possible for Merkin to teach or disclose displaying a schedule, and selecting to view a detail of a satisfied expectation. Moreover, Merkin could not disclose selecting to view, and displaying, one or more details of the satisfied expectation.

Therefore, the Merkin reference does not teach or disclose amended claim 23, and Applicant respectfully requests the withdrawal of the § 102(e) rejection against this claim. Dependent claim 24 is also allowable, at least for the reasons given above with regard to claim 23. Therefore, Applicant respectfully requests the withdrawal of the rejection of claims 23-24

under 35 U.S.C. § 102(e) as being unpatentable over Merkin et al., U.S. Patent No. 7,464,041, and allowance of claims 23-24.

Amended claim 43 recites generating an expectation for a health maintenance item for a person, and automatically determining the expectation has not been satisfied by comparing the expectation to the set of electronic records, a database, or user input. Claim 43 includes displaying more than one input option associated with the expectation, receiving a selection of at least one of the input options, and updating the health maintenance item. Further, claim 43 has been amended to include determining and displaying a health maintenance schedule for the person, including the updated health maintenance item.

As discussed above with respect to claims 1 and 23, the Merkin reference does not teach or suggest displaying input areas. Therefore, Merkin can not teach or disclose displaying more than one input option associated with an expectation. Moreover, Merkin can not teach a selection of an input option and displaying a health maintenance schedule including an updated item. The conventional practices discussed in Merkin do not suggest the elements of amended claim 43. Applicant respectfully submits the Merkin reference does not teach or disclose amended claim 43 and request the withdrawal of the § 102(e) rejection against this claim as being unpatentable over Merkin et al., U.S. Patent No. 7,464,041, and allowance of claim 43.

Claims 17 to 20, 37 to 40, and 47 in view of the Medvedeff Reference

Claims 17-20, 37-40, and 47 are rejected under 35 U.S.C. § 102(e) as being anticipated by Medvedeff (U.S. Publication No. 2003/0154107, hereinafter the “Medvedeff reference”). Claims 18-20 depend from independent claim 17. Claims 38-40 depend from

independent claim 37. Claim 47 is an independent claim. Applicant respectfully submits the Medvedeff reference does not anticipate amended independent claims 17, 37 and 47.

The Medvedeff reference is directed to a personalized preventive health care plan to decrease employee absenteeism. *See* Medvedeff reference, Abstract. The method in Medvedeff “requires a medically trained physician skilled in examining existing bodily conditions.” *See* Medvedeff reference at [0030] (emphasis added). In Medvedeff, a doctor, nurse, or other preventative care technician “travels to the place of normal activity of the person enrolled and participating in the program.” *See* Medvedeff reference at [0031]. In fact, the cited portion of Medvedeff specifically states “the evaluation and formulation of a wellness plan may only be performed by a person medially trained in the field of preventive health care.” *See* Medvedeff reference at [0034].

Claim 17 has been amended to recite receiving a satisfier for an expectation for a health maintenance item, and a computing device determining the person may have an adverse reaction to the satisfier based on healthcare information for the person. Additionally, amended claim 17 includes warning of the possible adverse reaction to the satisfier, and displaying an input area for receiving a selection of the satisfier. Claim 17 further includes receiving the selection by the computing device, updating a health maintenance schedule for the person based on a stored selection of the satisfier, and displaying the updated schedule.

Medvedeff does not teach or disclose utilizing computer processes and/or computing device(s) to develop a health care plan. The Medvedeff reference is completely silent regarding a computer system or methods. *See* Medvedeff reference at [0034] (“the evaluation and formulation of a wellness plan may only be performed by a person medially trained in the field of preventive health care.”). It would not be possible for the Medvedeff reference to teach or disclose a computing device determining a person may have an adverse reaction to a satisfier

and receiving a selection of the satisfier. Additionally, Medvedeff is silent as to updating and displaying a health maintenance schedule.

The Medvedeff reference does not teach or disclose amended claim 17, and Applicant respectfully requests the withdrawal of the § 102(e) rejection against this claim. Dependent claims 18-20 are also allowable, at least for the reasons given above with regard to claim 17. Therefore, Applicant respectfully requests the withdrawal of the rejection of claims 17-20 under 35 U.S.C. § 102(e) as being unpatentable over Medvedeff, U.S. Publication No. 2003/0154107, and allowance of claims 17-20.

Claim 37 has been amended to include determining an expectation for a health maintenance item for a person utilizing a computing device, determining the expectation for the health maintenance item has not been satisfied, and determining a recommended satisfier for the unsatisfied expectation. Additionally, claim 37 includes a receiving module for receiving a satisfier for an expectation for a health maintenance item and an obtaining module for obtaining, utilizing a first computer process, healthcare information for a person. A determining module determines, utilizing a second computer process, the person may have an adverse reaction to the satisfier by comparing information regarding possible adverse reactions to healthcare information for the person. Amended claim 37 further includes a warning module for warning of the possible adverse reaction to the satisfier, a receiving module for receiving, utilizing a third computer process, input associated with the satisfier, and a storing module for storing the input. The stored input updates a schedule for the patient, and a displaying module displays the updated patient schedule, including the satisfier, wherein the satisfier is selectable to view the input associated with the satisfier.

As discussed above with respect to Claim 17, the Medvedeff reference does not teach or disclose utilizing computer processes or device(s). In Medvedeff, the evaluation "may

only be performed by a person medically trained in the field of preventive health care.” See Medvedeff reference at [0034]. Therefore, it would be impossible for Medvedeff to disclose, *inter alia*, a determining module utilizing a computer process for determining a person may have an adverse reaction. Additionally, Medvedeff could not teach or disclose receiving input utilizing a computer process, storing the input, updating a schedule, and displaying the schedule where the satisfier is selectable to view the input.

The Medvedeff reference does not teach or disclose amended claim 37, and Applicant respectfully requests the withdrawal of the § 102(e) rejection against this claim. Dependent claims 38-40 are also allowable, at least for the reasons given above with regard to claim 37. Therefore, Applicant respectfully requests the withdrawal of the rejection of claims 37-40 under 35 U.S.C. § 102(e) as being unpatentable over Medvedeff, U.S. Publication No. 2003/0154107, and allowance of claims 37-40.

Amended independent claim 47 includes receiving a first satisfier for an expectation for a health maintenance item, obtaining healthcare information for a person, including a second satisfier associated with the person, and determining the person may have an adverse reaction to the first satisfier. Additionally, claim 47 includes warning of the possible adverse reaction to the first satisfier and receiving, by a computing device, input information associated with the first satisfier. The computing device updates the first satisfier based the input information. Claim 47 further includes displaying the first satisfier, receiving selection of the first satisfier, and displaying at least some of the input information based on the selection of the first satisfier.

As discussed above, Medvedeff does not include the elements of the amended independent claims included herein. The methods in Medvedeff specifically state the evaluation must be performed by a medical professional. The Medvedeff reference is silent regarding

computer processes, methods or devices. It would not be possible for Medvedeff to teach or disclose warning of a possible adverse reaction to a satisfier, receiving, by a computing device, input information associated with the satisfier, and updating the satisfier, as recited by amended independent claim 47.

The Medvedeff reference does not teach or disclose amended claim 47, and Applicant respectfully requests the withdrawal of the § 102(e) rejection against this claim as being unpatentable over Medvedeff, U.S. Publication No. 2003/0154107, and allowance of claim 47.

Rejections based on 35 U.S.C. § 103

Claims 8 to 16, 35, 36, and 45 in view of the Merkin and Kelly References

Claims 8-16, 35, 36, and 45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Merkin in view of Kelly et al. (U.S. Publication No. 2004/0243619, hereinafter the “Kelly reference”). Claims 8-14 depend from independent claim 1. Claim 16 depends from independent claim 15. Claim 36 depends from independent claim 35. Claim 45 is an independent claim. Applicant respectfully submits the amended claims are not rendered obvious by Merkin in combination with the Kelly reference.

A rejection under 35 U.S.C. § 103(a) requires finding the “subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.” MPEP § 2141. The analysis supporting a rejection under 35 U.S.C. § 103 should be made explicit and “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” MPEP § 2142 (*quoting In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). The Supreme Court held it will be necessary to look at interrelated teachings of multiple references, the effects of demands

in the marketplace, and the background knowledge possessed by one of ordinary skill in the art to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent application. *See KSR v. Teleflex*, 127 S. Ct. 1727 at 13-14 (2007). “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” MPEP § 2143.01 (*quoting In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)).

As discussed above, the Merkin reference is directed to methods of health care administration. *See* Merkin reference, Abstract. In Merkin, “the present invention expressly conditions the administration of [health care] via two important aspects, the first being directed to health care provided in an office-based setting, and the second being directed to the administration of preventative care and care related to patients afflicted with a chronic condition.” Merkin reference, col. 3, ll. 26-31. After care is determined to be rendered in Merkin, and, “[t]o the extent such care is rendered, the applicable appointments are made and preventative care administered per conventional practices.” Merkin reference, col. 10, ll. 2-5. The Merkin reference is completely silent regarding patients’ medical records beyond “conventional practices.” *See* Merkin reference, col. 4, ll. 30-47. In Merkin, only “conventional communications means” are used, “whether it be through telephone calls, letters, e-mail or any other type of methodology known in the art.” *See* Merkin reference, col. 11, ll. 28-36.

The Kelly reference is directed to “sending service reminders based on the estimated mileage [of a] vehicle... based on the age of the vehicle, or it can be based on the last known mileage of the vehicle and estimating the additional mileage using average vehicle mileage statistics.” *See* Kelly reference, Abstract. Applicant respectfully disagrees that the cited Merkin and Kelly references are in a similar field of endeavor. As discussed above, the Merkin

reference discloses health care administration, including conventional practices regarding medical records. The Kelly reference discloses a “shop management system” to generate repeat vehicle-service business. *See* Kelly reference at Abstract and [0004]. No reason or motivation exists to combine the Merkin and Kelly references. The conventional medical care in Merkin, and the method of “mileage-dependent servicing of vehicles” in Kelly, even in combination, do not render the amended claims obvious, and no apparent justification exists for combining the Merkin and Kelly references.

As discussed above, the Merkin reference does not teach or disclose amended claim 1. The Kelly reference does not cure the deficiencies of Merkin. Although Applicant respectfully disagrees the references are appropriately combined, even in combination, the Merkin and Kelly references do not disclose the elements of amended claim 1. Amended claim 1 includes obtaining patient information and applying one or more factors to the patient information utilizing a computing device, wherein the computing device applies the one or more factors to the patient information to generate an expectation for a health maintenance item for a person. Claim 1 includes automatically determining the expectation has not been satisfied, determining more than one satisfier for the expectation, and displaying the satisfiers. Additionally, amended claim 1 includes receiving a selection of one of the satisfiers utilizing an input area, and displaying a health maintenance schedule associated with the patient, including the satisfier.

Merkin and Kelly, even in combination, do not teach or disclose amended claim 1, including automatically determining an expectation has not been satisfied, determining satisfiers, and displaying the satisfiers. As discussed above, Merkin does not mention displaying input areas. Merkin is completely silent regarding displays and/or areas for receiving a selection of one of the satisfiers. In fact, Merkin is specifically limited to “conventional practices”

regarding patients' medical records, including letters and telephone calls. *See* Merkin reference, col. 4, ll. 30-47; col. 11, ll. 28-36. Therefore, it would not be possible for Merkin to teach or disclose amended claim 1. The Kelly reference does not cure the deficiencies of Merkin, including receiving a selection of one of the satisfiers, storing the satisfier, and displaying a health maintenance schedule, including the satisfier.

The Merkin reference in view of Kelly does not teach or disclose amended claim 1 and Applicant respectfully requests the withdrawal of the § 103(a) rejection against dependent claims 8-14, at least for the reasons given above with regard to claim 37. Therefore, Applicant respectfully requests the withdrawal of the rejection of claims 8-14 under 35 U.S.C. § 103(a) as being unpatentable over Merkin in view of Kelly 7, and allowance of claims 8-14.

Claim 15 has been amended to include receiving data associated with a person from electronic records and obtaining, utilizing a computing device, one or more unsatisfied health maintenance item expectations for the person. The computing device determines possible satisfiers by comparing one or more unsatisfied expectations to information from a database. Amended claim 15 includes receiving, by the computing device, a request for a detail associated with at least one of the possible satisfiers, displaying the detail, based on the request, in a separate screen, and storing at least one selected possible satisfier in association with the person. Storage of the selected possible satisfier updates a health maintenance schedule for the person.

As discussed above, the Merkin reference is silent regarding displaying information. It would not be possible for Merkin to disclose displaying a detail associated with a possible satisfier, selection of a satisfier, and storage of the satisfier that updates a health maintenance schedule. The Kelly reference does not cure the deficiencies of Merkin. In fact, even if improperly combined, the Kelly and Merkin references do not disclose a request for a detail associated with a possible satisfier and updating a health maintenance schedule.

The Merkin and Kelly references do not teach or disclose amended claim 15, and Applicant respectfully requests the withdrawal of the § 103(a) rejection against this claim. Dependent claim 16 is also allowable, at least for the reasons given above with regard to claim 15. Therefore, Applicant respectfully requests the withdrawal of the rejection of claims 15-16 under 35 U.S.C. § 103(a) as being unpatentable over Merkin in view of Kelly and allowance of claims 15-16.

Amended independent Claim 35 includes searching records to identify unsatisfied health maintenance item expectations, and obtaining one or more unsatisfied health maintenance item expectations, and obtaining possible satisfiers for each. Claim 35 includes displaying the possible satisfiers for each of the one or more unsatisfied expectations, wherein the display includes an input area associated with each of the possible satisfiers, and receiving and storing input associated with a first possible satisfier. Additionally, claim 35 includes determining a priority level of the first satisfier, updating a patient schedule based on the input, and displaying the updated patient schedule, including the first satisfier and the priority level.

As discussed above, even in combination, the Merkin and Kelly references do not disclose displaying possible satisfiers, storing input associated with a satisfier, and displaying an updated patient schedule, including the priority level of the satisfier. The Merkin and Kelly references do not teach or disclose amended claim 35, and Applicant respectfully requests the withdrawal of the § 103(a) rejection against this claim. Dependent claim 36 is also allowable, at least for the reasons given above with regard to claim 35. Therefore, Applicant respectfully requests the withdrawal of the rejection of claims 35-36 under 35 U.S.C. § 103(a) as being unpatentable over Merkin in view of Kelly and allowance of claims 35-36.

Claim 45 has been amended to include obtaining one or more unsatisfied health maintenance item expectations for a person by applying factors to records associated with the

person, and obtaining possible satisfiers for each of the one or more unsatisfied expectations. Additionally, amended claim 45 includes displaying the possible satisfiers, receiving input associated with a first satisfier, determining the priority of the first satisfier, and displaying an updated health schedule, including the satisfier and an indication of the priority. As discussed above, the Merkin reference does not disclose displaying information or receiving input. It would not be possible for Merkin to disclose receiving input associated with a first satisfier and displaying an updated health schedule, including an indication of the priority of the satisfier. Even if combined with Kelly, the Merkin reference does not teach or disclose the elements of amended claim 45. Therefore, Applicant respectfully requests the withdrawal of the rejection of independent claim 45 under 35 U.S.C. § 103(a) as being unpatentable over Merkin in view of Kelly and allowance of claim 45.

Claims 21, 22, 41, and 42 in view of the Medvedeff and Albaum References

Claims 21, 22, 41, and 42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Medvedeff in view of Albaum et al. (U.S. Patent No. 5,758,095, hereinafter the “Albaum reference”). Claims 21 and 22 depend from independent claim 17, and claims 41 and 42 depend from independent claim 37. Applicant respectfully submits the amended claims are not unpatentable over the Medvedeff and Albaum references.

As discussed above, the Medvedeff reference specifically discloses conventional practices regarding medical records. In fact, Medvedeff teaches away from determinations or methods performed by a computer system. See Medvedeff reference at [0034] (“the evaluation and formulation of a wellness plan may only be performed by a person medially trained in the field of preventive health care.”). The only options for presenting a plan in Medvedeff are through a physician traveling to a place of business and communicating the plan to a person, or,

“any person sufficiently trained in the medical arts to communicate the preventative care plan may travel to the place of normal business activity for presentation...which may include but is not limited to doctor’s assistants, nurses and the like.” Medvedeff reference at [0035].

The Albaum reference does not cure the deficiencies of Medvedeff. The invention in Albaum “has two primary embodiments... an inpatient pharmacy system designed as an interface to preexisting hospital pharmacy systems [and]... a pharmacy system to be used in outpatient and clinic settings.” See Albaum reference, col. 6, ll. 24-28. “In both versions the software is designed to accommodate customary medication ordering styles and practices in lieu of rigid fixed format entry,” according to the Albaum disclosure. Albaum reference at col. 6, ll. 28-30. The Albaum reference is silent regarding user-interaction beyond programming initial predetermined situations and messages. See Albaum reference at col. 3, ll. 30-47. Applicant respectfully submits Albaum could not teach or disclose receiving selection of, or input associated with, satisfiers for a patient, and displaying an updated health maintenance schedule for the patient.

The combination of Medvedeff and Albaum, even if proper, does not teach or disclose all of the elements of amended independent claims 17 and 37. Claim 17 has been amended to include receiving a satisfier for an expectation for a health maintenance item, obtaining healthcare information for a person, and determining the person may have an adverse reaction to the satisfier, based on the healthcare information for the person. Amended claim 17 includes warning of the possible adverse reaction to the satisfier and displaying an input area for receiving a selection of the satisfier. Additionally, claim 17 includes storing the selection of the satisfier in association with the person, and displaying an updated health maintenance schedule for the person.

Independent claim 37 has been amended to include, *inter alia*, a determining module for determining an expectation for a health maintenance item for a person utilizing a computing device, automatically determining the expectation for the at least one health maintenance item has not been satisfied, and determining a recommended satisfier for the unsatisfied expectation. Amended Claim 37 includes receiving a satisfier for an expectation for a health maintenance item, obtaining healthcare information for a person, and determining the person may have an adverse reaction to a satisfier by comparing information regarding possible adverse reactions to healthcare information for the person. Claim 37 includes warning of the possible adverse reaction to the satisfier, receiving input associated with the satisfier, and displaying an updated patient schedule, including the satisfier, wherein the satisfier is selectable to view the input associated with the satisfier.

Medvedeff, in combination with Albaum, does not teach amended claims 17 and 37. As discussed above, the Medvedeff reference does not disclose displaying information and receiving input. Albaum does not cure the deficiencies of Medvedeff. Albaum does not teach or disclose receiving and storing additional information in association with a person. In fact, combining the Albaum reference with Medvedeff would preclude the “conventional practices” purpose disclosed in Medvedeff, and the references would be improperly combined. The Albaum and Medvedeff references could not teach or disclose receiving selection of, or input associated with, satisfiers for a patient, and displaying an updated health maintenance schedule for the patient.

The Medvedeff reference in view of Albaum does not teach or disclose amended claims 17 and 37, and Applicant respectfully requests the withdrawal of the § 103(a) rejection against these claims. Dependent claims 21, 22, 41 and 42 are also allowable, at least for the reasons given above with regard to claims 17 and 37. Therefore, Applicant respectfully requests

the withdrawal of the rejection of claims 21, 22, 41 and 42 under 35 U.S.C. § 103(a) as being unpatentable over Medvedeff in view of Albaum and allowance of claims 21, 22, 41 and 42.

Claim 44 in view of the Merkin and Danneels References

Claim 44 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Merkin in view of Danneels et al. (U.S. Patent No. 6,272,472, hereinafter the “Danneels reference”). The Danneels reference is directed to a method of selecting items to be purchased and generating a list of reseller websites. Then, information is transmitted to one of the reseller’s web sites regarding items to be purchased. *See* Danneels reference, col. 1, ll. 44-50. The Danneels reference, even if combined with Merkin, does not teach or disclose amended claim 44. Moreover, there is no apparent reason for combining the Danneels and Merkin references.

Amended Claim 44 includes generating an expectation for a health maintenance item for a person, automatically determining the expectation has not been satisfied, and displaying a health maintenance schedule for the person, including the unsatisfied health maintenance item, on an interface. Additionally, claim 44 includes displaying an input area for receiving requests for additional information associated with the unsatisfied health maintenance item, receiving a request, and opening a window on the interface that includes additional information about the unsatisfied health maintenance item in response to the request. Support for amendments to claim 44 is found, at least, at paragraphs [0036], [0038]-[0039], [0050], [0057]-[0060], and [0065]-[0069], and FIGS. 7-11, of the present application.

The references, even if combined, do not mention displaying a health maintenance schedule, nor determining and displaying an unsatisfied expectation for a health maintenance item. Neither Merkin nor Danneels could teach displaying a health maintenance schedule for a person, and an input area for receiving requests for additional information

associated with an unsatisfied health maintenance item, on an interface. Therefore, the Merkin and Danneels references do not teach or disclose amended claim 44, and Applicant respectfully requests the withdrawal of the § 103(a) rejection against this claim as being unpatentable over Merkin in view of Danneels and allowance of claim 44.

Claim 46 in view of the Merkin, Kelly and Danneels References

Claim 46 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Merkin in view of Kelly in further view of Danneels. Claim 46 has been amended to include obtaining one or more unsatisfied health maintenance item expectations for a person, obtaining possible satisfiers for each of the unsatisfied expectations, and displaying the possible satisfiers for each of the one or more unsatisfied expectations. Amended claim 46 includes receiving input associated with a first unsatisfied expectation, wherein the input indicates postponement, refusal or expiration of the first unsatisfied expectation, and storing the input in association with the first unsatisfied expectation. Additionally, claim 46 includes receiving a request for, and displaying, a health maintenance schedule, and displaying the input in response to a selection. Support for amendments to claim 46 is found, at least, at paragraphs [0036], [0038]-[0039], [0050]-[0053], [0057]-[0060], and [0065]-[0069], and FIGS. 7-11, of the present application.

Merkin and Danneels, even if combined, are silent regarding displaying satisfiers and receiving input associated with an unsatisfied expectation, and Kelly does not cure the deficiencies of Merkin and Danneels. It would not be possible for these same references to teach input including postponement, refusal or expiration of the health maintenance expectation. Therefore, the Merkin, Kelly and Danneels references do not teach or disclose amended claim 46, and Applicant respectfully requests the withdrawal of the § 103(a) rejection against this

claim as being unpatentable over Merkin, in view of Kelly and Danneels, and allowance of claim 46.

Claim 48 in view of the Medvedeff and Danneels References

Claim 48 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Medvedeff in view of Danneels. Claim 48 has been amended to include receiving a satisfier for an expectation for a health maintenance item, obtaining healthcare information for a person, and displaying the healthcare information in a schedule in a first screen on a user-interface. Amended claim 48 includes determining the person may have an adverse reaction, warning of the possible adverse reaction, receiving selection of the satisfier, obtaining information associated with the satisfier, and displaying the information associated with the satisfier in a second screen on the user-interface. Support for amendments to claim 48 is found, at least, at paragraphs [0061]-[0062], and FIGS. 3-14, of the present application.

Even in combination, the Medvedeff and Danneels references do not teach or disclose receiving a selection of a satisfier, and displaying information associated with the satisfier in a second screen on a user-interface. Therefore, the cited references do not teach or disclose amended claim 48, and Applicant respectfully requests the withdrawal of the § 103(a) rejection against this claim as being unpatentable over Medvedeff in view of Danneels and allowance of claim 48.

CONCLUSION

For at least the reasons stated above, claims 1-48 are now in condition for allowance. Applicant respectfully requests withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or mpeal@shb.com (such communication via email is herein expressly granted) – to resolve the same. The Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112.

Respectfully submitted,

/Mary Jane Peal/

Mary Jane Peal
Reg. No. 63,978

Mary Jane Peal
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613
816-474-6550